

Office of Chief Counsel  
Internal Revenue Service

## memorandum

CC:LM:MCT:DET:TL-N-997-01  
ERSkinner

date:

to: LMSB Team Manager, David Stacey

from: Associate Area Counsel  
(Heavy Manufacturing, Construction and Transportation:Edison)

subject:

[REDACTED]  
I.R.C. § 6012 Determination

This memorandum is in response to your request for advice regarding whether [REDACTED] a non-profit Michigan Corporation may receive a determination from the Internal Revenue Service that it is not required to file federal income tax returns. The advice in this memorandum has been reviewed in the National Office. If you have any questions, please call the undersigned at (313) 237-6426.

### Issue

Whether a corporation which was established and organized in [REDACTED] but transacts no business, has no income, assets or employees, may receive a determination that it is not required to file federal income tax returns pursuant to Treas Reg. § 1.6012-2(a)(2).

### Conclusion

[REDACTED] is required to file a return for [REDACTED] because it was in existence in [REDACTED]. In [REDACTED], it had articles of incorporation and had taken all actions necessary to perfect its organization. The fact that it did not receive any income, or transact business, does not negate its obligation to file a return.

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### Facts

[REDACTED], on behalf of [REDACTED] ("[REDACTED]"), has requested a determination under Treas. Reg. Section 1.6012-2(a)(2) that [REDACTED], E.I.N. [REDACTED] be relieved from the requirement of filing U.S. Corporation Income Tax Returns.

[REDACTED] was incorporated under the laws of Michigan on [REDACTED] as a nonprofit corporation. Attached are the following documents for [REDACTED]: Determination Request from [REDACTED], Form SS-4 filed [REDACTED], List of the Board of Directors and Officers, By-Laws dated [REDACTED], Corporate Resolutions, Articles of Incorporation, and a prior request and determination letter for an I.R.C. § 6012 determination for [REDACTED].<sup>1</sup> [REDACTED] did not file a tax return for [REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] has no assets, no liabilities and no equity. It does not incur any expenses or receive any income, and it keeps no financial accounting records. The

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[REDACTED] indicates the present request is almost identical to their earlier request for [REDACTED] and should be similarly granted. Our office did not participate in the earlier request or determination.

corporation is expected to remain inactive indefinitely.

### DISCUSSION

Treas. Reg. § 1.1602-2(a)(2) provides in part that:

(2) Existence of corporation. A corporation in existence during any portion of a taxable year is required to make a return. If a corporation was not in existence throughout an annual accounting period (either calendar year or fiscal year), the corporation is required to make a return for that fractional part of a year during which it was in existence. ... [I]f a corporation has received a charter **but has never perfected its organization** and has transacted no business and has no income from any source, it may upon presentation of the facts to the district director be relieved from the necessity of making a return. In the absence of a proper showing of such facts to the district director, a corporation will be required to make a return. (emphasis added).

Section 1.6012-2(a)(2) of the regulations requires all corporations in existence to file income tax returns, even if they have no income. The exception to the requirement to file a return for a corporation receiving a charter but not perfecting its organization and transacting no business and receiving no income recognizes that the presence of business activity and income may disprove corporate nonexistence. However, the inverse does not follow; that is, this regulations does not require the conclusion that a corporation does not begin existence if it does no business. To the contrary, this regulation requires a return whether or not the corporation receives income and a return is required even if the corporation is dormant.

In general, a corporation comes into existence when its charter is issued; that is, a corporation is in existence if it has the power to contract and acquire property. See Allied Utilities Corp. v. Commissioner, 64 T.C. 1024 (1975); Braswell Motor Freight Lines, Inc. v. U.S., 72-2 USTC par. 9675 (N.D. Tex. 1972), *affd per curiam* 477 F.2d 594 (5<sup>th</sup> Cir. 1973), *cert. denied* 414 U.S. 1143 (1974). Under Michigan law, a corporation comes into existence on the effective date of the articles of incorporation. See § 21.197(221) Mich. Stat. Ann.

In the present case, [REDACTED] came into existence in [REDACTED] when it filed its articles of incorporation. In addition to filing articles of incorporation, [REDACTED] has taken all actions necessary to perfect its organization. The facts indicate that [REDACTED] has elected officers, crafted by laws, and taken other steps necessary to endow itself with the capacity to transact the business for which it was created. Further, under Michigan law, there is no requirement to acquire assets or

conduct business to be considered a corporation. [REDACTED] has met all the state law requirements for incorporation and possesses all the rights available under that state law to function as a corporation. Because [REDACTED] was organized as a corporation under state law, it will be recognized as a corporation for federal tax purposes. See § 301.7701-2(b) of the Regulations on Procedure and Administration.

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